

IN THE MATTER OF the Ontario Human Rights Code,
R.S.O. 1970, C.318, as amended.

AND IN THE MATTER OF a Complaint made by William
Boyd that he was denied employment because of his
sex by Mar-Su Interior Decorators Ltd. and by
Alex Gripp.

Appearances

S.L. GOLDENBERG - Counsel for the Ontario Human
Rights Commission and the Complainant William
Boyd.

ALEX GRIPP - on behalf of Mar-Su Interior
Decorators Ltd. and personally.

Mr. William Boyd, the complainant herein, responded to a newspaper advertisement for a vacancy in a sales clerk position offered by the respondent Mar-Su Draperies which described the duties in part as installing drapes in customers' homes following training. Mr. Boyd, a young man of 19, had a previous work record which demonstrated very considerable ambition, industry and conscientiousness on his part. Indeed, at one point, he held down three responsible positions at the same time, all the while attending five classes daily at high school.

On arriving at the Mar-Su premises, and inquiring about the vacancy, he was unequivocally advised by an employee of the store, following the express instructions of the owner, Mr. Alex Gripp, that the job was only open to women. The same employee had similarly responded to inquiries from other male applicants, either in person or by telephone. There is no question that Mr. Gripp gave the instructions in question. He clearly admitted that such was his position to an investigating Human Rights Commission officer, Mr. James Stretton, and he testified to the same effect at the hearing. Indeed, virtually on the eve of the hearing, he caused a sign to be placed in the store, clearly visible to passing pedestrians, announcing that "Female Help Wanted - Will Train". Considering the time and circumstances this action on the part of Mr. Gripp may not qualify as a particularly adroit example of tactics but it does indicate the adamant consistency of his position and of his intention to exclude all men, including Mr. Boyd, from the position so advertised.

His peremptory dismissal from any and all consideration not unnaturally vexed the latter and he proceeded the same day to file a complaint of discrimination under the Ontario Human Rights Code against

Mar-Su Draperies. Specifically Mr. Boyd alleged that he was denied recruitment, employment and training because of his sex contrary to sec. 4(1)(a),(b),(c) of the Code.

Because Mr. Gripp was the President, sole executive officer and only shareholder of Mar-Su the Board acceded to an application by Mr. Goldenberg (and with the consent of Mr. Gripp) that he be joined as co-respondent. It should be added that Mr. Gripp acted on his own behalf throughout the hearing.

This case, in one respect at least, is a comparative rarity inasmuch as the element of discrimination is candidly expressed and frankly conceded. In most instances, whereas discrimination might be the real reason behind an employment practice or other conduct falling under the Code, and hence contrary thereto, it is usual to mask or conceal the prejudice behind the facade of some "legitimate" reason and although much may be suspected often little can be proved.

It is now appropriate to examine the requirements of the position which was denied out of hand to Mr. Boyd because the ^{case} ~~case~~ of Mr. Gripp's defence to the allegation of admitted discrimination was that only women were capable of satisfactorily performing the job and, conversely, that men could not do so. The position in question included an element of work, described in the testimony as that of an installer-helper, which consisted of putting the finishing or decorative touches to drapery being installed in customers' homes. These finishing touches included pleating or setting the drapes, straightening the hem line if necessary and, also if necessary, fixing the drapes by further sewing or by re-adjusting the lining.

In brief, the witnesses called by Mr. Gripp, and Mr. Gripp himself, testified that on a few past occasions when men had been employed to do the finishing that the results had been unsatisfactory and the work had to be redone, either by Mr. Gripp or by one or other of his female employees. With one exception these witnesses chorused that the reason for this woeful ineptitude on the part of the men was that men as a species are incapable of acquiring the special and unique "touch" required and that it is a peculiar feminine talent which only women can ever hope to master.

On the other hand the witnesses called by Mr. Goldenberg for the Commission were of a diametrically opposite view. In their opinion there is no reason whatsoever why a man, following training, cannot do just as well as a woman in this regard. I find the evidence of the Commission witnesses extremely persuasive and I accept their opinion without reservation. One of the witnesses was a former female employee of Mr. Gripp, whom the latter described as exceptionally competent, and still another was the manager of a rival drapery store who testified that men were employed as finishers by her store and by other drapery establishments in the city. As indicated earlier one of Mr. Gripp's own witnesses shared the opinion that a man could do a perfectly satisfactory job of finishing drapes.

On the other hand the testimony on behalf of Mr. Gripp lacked weight in some respects because the evidence of at least two of the witnesses was clearly hearsay and in most instances the independence of the testimony was dubious. To be fair to Mr. Gripp this latter criticism needs some elaboration. As previously mentioned Mr. Gripp

conducted his own case. The Board permitted him considerable latitude in conducting his questioning of witnesses and partly for that reason a good deal of his examination-in-chief was flawed by leading questions, in some cases virtually taking the form of assertions on his part. In the result many of the witnesses responses were unreflective and parrot-like and the value of their testimony suffered accordingly.

Once discrimination has been established, as is clearly the case here, the only available defence is that contained in sec. 4(6) of the Human Rights Code which provides that the prohibition against discrimination on grounds of sex set out in sec. 4(1)(a),(b) and (c) do not apply "where sex is a bona fide occupational qualification and requirement for the position of employment". It follows from the evidence, and the Board's acceptance of the testimony of the Commission's witnesses, that sex is quite irrelevant to the position under consideration and the limited exception provided by sec. 4(6) has no application whatsoever. It equally follows that, at the very least, Mr. Gripp and his alter ego Mar-Su are guilty of a breach of sec. 4(1)(a) and (b) of the Code by refusing to recruit or employ Mr. Boyd on grounds of sex and I so find. Even if the evidence pertaining to the exception in sec. 4(6) were more doubtful the result would still be the same because as an exception to a general prohibition against discrimination, which in turn is remedial legislation, the onus is upon Mr. Gripp to affirmatively establish that the exception applies.

The foregoing is sufficient to dispose of the merits of the case but, with deference, some further observations may be in order relating to the defence contemplated by sec. 4(6) of the Code and the evidence



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and attitudes disclosed by the testimony at the hearing.

As a general observation this Board considers that any application of the exception on the ground that sex is a bona fide occupational qualification will itself be very exceptional and limited (more so, perhaps, than age or marital status). Although Victorian and Edwardian myths, stereotypes and preconceptions concerning the respective roles of the sexes, and conventions relating to what is fitting and proper, have been slow in dying the rate of acceleration towards that demise has increased rapidly in recent years. Particularly is this the case with regard to women. Not so long ago, in Ontario at least, a female bartender was unheard of whereas today such employment is quite unremarkable. Likewise female taxi drivers are no longer novel and female barbers are commonplace. Female jockeys win important stakes and the fact of sex goes unnoticed and unnoted. Female boxers fight regularly in several jurisdictions in the United States and female cosmonauts are presently in training and soon will be orbiting in space and walking on the moon.

Indeed it is difficult to conjure up examples where maleness would be a bona fide occupational qualification so that a female may be lawfully excluded therefrom. Perhaps, at a hazard, it would still be considered inappropriate to employ a woman as a lavatory attendant in a men's washroom although such presently occurs in some European countries. Undoubtedly too, there are still some jobs which require brute physical power quite beyond the muscular strength of a woman but in an age of machinery and automation the ambit of this area is also narrowing rapidly.

The same observations apply to men. In the present case, for example, the testimony of Mr. Gripp and his witnesses that a man is simply not satisfactory when it comes to the performance of functions requiring care, taste and delicacy must be based on myth and old fashioned notions of his conventional role because such an opinion is totally divorced from reality. The argument in the case disclosed yet another flaw, that is, the habit of equating particulars with a general conclusion. Because some men did not perform satisfactorily while in his employ Mr. Gripp concluded that no man can be satisfactory or develop the requisite interest to do good work. This type of reasoning is not only facile, it is fatal. For example, and for the sake of argument, let us assume that there are a good many more women who are excellent cooks than there are excellent male cooks. Logically extended Mr. Gripp's argument would lead to his refusing to hire a male chef to run his kitchen or a male hair dresser to operate his ladies hairdressing salon or, more appropriately to his own situation, a male interior decorator to do over his house. In all three cases, of course, there are many men who are quite pre-eminent in these fields.

There is another aspect to the evidence, unrelated to the above, which might usefully be mentioned if only because a considerable amount of testimony was devoted to the matter. In seeking to hire only women as installer-helpers (and further requiring that they be under 30 and single) it is a permissible inference that Mr. Gripp simply prefers the company of women. So do a good many men and there is nothing wrong with that but private preference, however understandable, cannot be substituted for a bona fide occupational requirement within any exception contemplated by sec. 4(b) of the Code.

Finally the Board should direct some remarks to the attitude manifested by Mr. Gripp to the whole concept of the Human Rights Code. That attitude was one of violent antipathy and it was quite obvious throughout the hearing that he was labouring under a serious misapprehension concerning its purpose. If Mr. Gripp had been represented by counsel he would not have been led into such an error which, resulting as it did in intemperate and irrelevant remarks, seriously affected the presentation of his case.

In the first place, Mr. Gripp considered that the injunctions of the Code were designed to force him to employ Mr. Boyd and one was left with the distinct impression that he felt the Code obliged him to hire Mr. Boyd regardless of the latter's merits or competence. The idea that he was only obliged to consider Mr. Boyd fairly and objectively escaped him utterly.

In the second place, the fact that the Code does place restrictions on his employment practices, and does prevent him from doing just as he pleases in that respect, was considered by Mr. Gripp to be an intolerable limitation on his personal freedom and he likened the strictures of the Code to the tyranny of Communism from which he fled to Canada. Perhaps those who have suffered under and escaped from such a political system are more than usually sensitive to any restraints and limitations placed upon individual freedom and see them as iniquitous and insidious. Even such hallowed and cherished liberties as freedom of speech, of the press and of assembly are not absolute and attract many necessary restrictions. A person may not defame his neighbour under the guise of free speech, nor incite him to hatred or sedition nor can he shout "Fire" in a crowded theatre; a newspaper is bound by the laws of libel and by

crime of obscenity and freedom of assembly does not comprise an unlawful conspiracy nor condone an unruly mob.

The Human Rights Code is no different. It seeks to prevent abuses in the name of liberty and really only asks that people act fairly and decently, one to the other, in the limited area to which it applies. Most people act in that fashion without having to be told to or forced to. The Code simply affords protection against the minority who refuse to do so.

Finally, it is necessary to set out the Board's recommendations consequent upon its finding that the corporate respondent and Mr. Gripp were in breach of sec. 4(1)(a) and (b) of the Human Rights Code.

First of all, Mr. Goldenberg submitted that the respondent be ordered to remove the "Female Help Wanted" sign, if it is still there, which Mr. Gripp placed on the store premises. At the time of the hearing the Board acceded to a request from Mr. Goldenberg and amended Mr. Boyd's original complaint to add an allegation that such a sign constituted a violation of sec. 1(1) of the Code. The Board has had second thoughts on the matter, because technically the subsequent erection of the sign is independent of the complaint signed by Mr. Boyd and which constituted the basis of the hearing. However, notwithstanding, the sign was relevant evidence in the case and was before the tribunal as indicating the continuing posture of Mr. Gripp to refuse the opportunity of employment on the basis of sex. In consequence of the Board's findings the sign constitutes a breach of sec. 1(1) of the Code on the part of both respondents and it must be removed if such has not already been done.

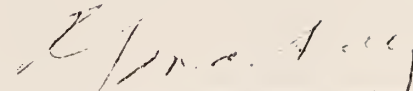
Further it is ordered, and the following orders apply to both respondents and to Mr. Gripp personally in relation to any substantially similar business which he may incorporate or conduct as a proprietor, that:

- (1) the respondent Alex Gripp write a letter to the Chairman of the Ontario Human Rights Commission that in the future the respondents will abide by the standards of the Human Rights Code and that:
- (2) the respondent Alex Gripp give notice of any employment opportunity to the Ontario Human Rights Commission for a period of one year from the date set out hereunder, such notice(s) being given prior to any public advertisement and that:
- (3) the respondent Alex Gripp post in his premises the declaration of management policy of the Ontario Human Rights Commission and that:
- (4) the respondent Alex Gripp afford reasonable access from time to time, and for a period of one year from the date hereunder, to officers of the Commission to enable them to enter the business premises and ascertain that there has in fact been compliance with the requirements of the Human Rights Code and of these orders and that:
- (5) the respondents pay a total sum of \$100 to the Complainant as general damages by way of compensation for the cavalier treatment accorded him.

I find that an award of pecuniary damages for assumed loss of employment to be too speculative in the circumstances and no order

is made with respect thereto.

DATED this 22nd day of February, 1978.



R.S. MACKAY, Q.C.
Chairman, Board of Inquiry

